

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF AVA 2009 JUN 17 AM 8:58

JEANNE HICKS, CLERK

STATE OF ARIZONA,

BY N. Segura

Plaintiff,

vs.

No. CR 2008 1339

STEVEN CARROLL DEMOCKER,

Defendant.

CONTINUED SIMPSON HEARING

TESTIMONY OF CYNTHIA WALLACE

TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE THOMAS B. LINDBERG

Prescott, Arizona
January 15, 2009

ORIGINAL

REPORTED BY:

HEIDI ANDERSON, RPR, 50315
Certified Reporter
P.O. Box 1222
Prescott, Arizona 86302

HEIDI ANDERSON

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I N D E X

<u>WITNESS</u>	<u>PAGE</u>
<u>PLAINTIFF</u>	
CYNTHIA WALLACE	
Direct Examination by Mr. Ainley	3
Cross-Examination by Mr. Sears	24
Redirect Examination by Mr. Ainley	41

* * *

1 Superior Courtroom
2 Division VI
3 Yavapai County Courthouse
4 Prescott, Arizona
5 January 15, 2009

6 APPEARANCE OF COUNSEL:

7 For Plaintiff:

8 MARK AINLEY
9 Deputy County Attorney
10 Prescott, Az.

11 For Defendant:

12 JOHN SEARS
13 Attorney at Law
14 Prescott, Az.
15 and
16 LARRY A. HAMMOND,
17 ANNE M. CHAPMAN
18 Attorneys at Law
19 2929 N. Central Ave.
20 21st Floor
21 Phoenix, Az. 85012
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23
24
25

1 THE COURT: We're continuing in State versus
2 Steven DeMocker, CR 2008 1339. Defendant is present. All
3 counsel are here.

4 Mr. Ainley.

5 MR. AINLEY: Thank you.

6 The State calls Cynthia Wallace to the stand.

7
8 CYNTHIA WALLACE,
9 called as a witness herein, being first duly
10 sworn, was examined and testified as follows:

11
12 THE COURT: Mr. Ainley.

13 MR. AINLEY: Thank you.

14
15 DIRECT EXAMINATION

16 BY MR. AINLEY:

17 Q Ms. Wallace, I'm placing a copy of a letter
18 you wrote concerning this matter here. It's marked as
19 Exhibit 76 for identification. I'm going to put it here
20 face down in front of you. Please feel free to use that
21 document at any time to refresh your recollection, you
22 want to check a date or a time or something like that.

23 A Okay.

24 Q But please indicate verbally that you are
25 looking at the letter you wrote.

1 A Okay.

2 Q Okay?

3 Ma'am, would you state your name, please.

4 A Cynthia C. Wallace.

5 Q How are you employed, ma'am?

6 A I'm an enrolled agent. I'm employed by
7 Wallace and Associates which is -- it's a single member
8 L.L.C.

9 Q What is it that Wallace and Associates do?

10 A Income tax accounting, sir.

11 Q Is that what you do?

12 A Yes, it is.

13 Q How long have you been doing income tax
14 accounting service?

15 A For probably the last 40 years, more
16 regularly in Prescott since 1992, but with an office
17 downtown -- this is my fifth year downtown.

18 Q Okay. Did you have occasion to meet
19 Virginia Carol Kennedy?

20 A Yes, I did.

21 Q How did you meet her?

22 A She called my office for an appointment to
23 get an extension on her 2007 income tax returns, and she
24 came into the office on April the 10th of last year.

25 Q 2008?

1 A 2008.

2 Q When she came into your office, did she
3 tell you why she was there?

4 A Well, Steven DeMocker had already filed his
5 income tax returns, and she brought a copy of that with
6 her, and she was upset about the amount of alimony he had
7 claimed on his return, and even though his accountant had
8 offered to do her income tax return, she did not feel
9 comfortable with that.

10 Q Did she say why?

11 A Well, she felt it was unethical for him to
12 do it and, you know, she didn't agree with what he put on
13 Steven's return.

14 Q Okay. Did she say why she didn't agree
15 with the income tax return?

16 A Just the alimony as -- was -- she did not
17 feel the amount of alimony on his income tax return was
18 the amount of alimony she should have to claim on her own.

19 Q Describe Mrs. -- Ms. Kennedy's demeanor as
20 she was talking with you about this.

21 A Well, she was very upset because the
22 potential tax liability, if she had to claim the income
23 tax on her own return that he had claimed, she would have
24 owed quite a little bit in income tax which she indicated
25 she did not have.

1 Q Did she express any other concerns about
2 her tax liability?

3 A With that one was -- the tax liability, if
4 she had claimed -- I had to claim the amount of alimony on
5 his, would have been -- I might have to look at my
6 document here because I did put that figure on here.

7 It would have been \$17,000 to the state and the
8 federal if she would have had to claim that on her income
9 tax return.

10 Q You said she appeared upset. Who was she
11 upset about?

12 A She was upset at everybody, but mostly at
13 that time with Steve Democker and his accountant.

14 Q Okay. Did she say she was going -- what
15 did she say she was going to do about this tax return?

16 A Well, she -- she actually had handed me
17 information from a couple of backups to his income tax
18 return showing what he had outlined or his accountant once
19 had outlined as the breakdown on the alimony which she did
20 not feel that, you know, even though some of it was to her
21 benefit, she didn't feel like she owed it.

22 She just felt overall that one of the documents
23 that she brought had handwritten notes by her where she
24 said that she thought that DeMocker was defrauding the
25 IRS.

2 Q Let me show you what's been marked as
1 Exhibit 78.

2 Do you recognize that document?

3 A Yes, I do.

4 Q Why do you recognize it?

5 A That's the one I referred to and I
6 presented this to your office in response to a subpoena.

7 Q Is this the document that Ms. Kennedy had
8 brought in and gave to you?

9 A This is one of them, yes.

10 Q And did you -- did she provide you with a
11 copy of the document?

12 A Of this?

13 Yes. I made a copy on my copy machine.

14 Q You incorporated it into her file?

15 A Yes, I did.

16 Q Those files kept, created, maintained in
17 the course and scope of daily operations of Wallace and
18 Associates?

19 A Yes, they are.

20 Q Are you custodian of records of those
21 documents?

22 A Yes, I am.

23 MR. AINLEY: State moves admission of 78.

24 MR. SEARS: No objection.
25

2

1 THE COURT: 78 is admitted.

2 Q BY MR. AINLEY: What was it about that
3 document that caught your eye?

4 A Well, the fact that she was claiming that
5 Steven was defrauding the government, and then also she
6 says in here that she's going to report his accountant to
7 the state licensing board.

8 She verbally told me that she was going to
9 report Steve to the IRS, although she doesn't say that in
10 here. She didn't write that in here. She said he was
11 defrauding the federal government.

12 Q Is there a note on it in Ms. Kennedy's
13 handwriting that concerned what she intended to do?

14 A Just the fact that she was reporting him to
15 the state licensing bureau, and I have to backtrack on
16 something I had said earlier. I have to apologize.

17 From the last probably fourth -- there was --
18 none of my handwriting was on here, which is correct. The
19 last fourth of this, I don't know whose handwriting it is,
20 but it appears to be her phone calls and her appointments
21 with me, but I don't know whose handwriting that is. It's
22 not mine. It's not mine. I have to backtrack maybe.

23 Q You said she mentioned fraud?

24 A Yes, she did.

25 Q Did she elaborate what she thought this

2 1 fraud was?

2 A Not too much. She had said the alimony she
3 thought was fraud. He was doing that to get a larger tax
4 return than what he was entitled to, but she also made
5 reference to his pension withdrawal during 2007.

6 Q Did she ever mention a report done by a
7 forensic expert she had hired?

8 A No. She did not mention that to me. I
9 knew she hired one, but she didn't tell me what he said.

10 Q Okay. Did you ask her to elaborate on what
11 she mentioned by defraud?

12 A Nope.

13 Q Why not?

14 A Well, because my thing was that based on
15 what I could see, it was just like one man's opinion
16 maybe. I was mainly concerned with getting her 2007 tax
17 return done accurately. Whether or not there was any
18 fraud involved in that, I wouldn't know because his -- all
19 the documents were here, but for me that would be an issue
20 for the IRS when they got her return, and not for me to be
21 making anyway. I did not ask for her to elaborate on
22 that.

23 Q Were there any other topics of conversation
24 by you and her in April?

25 A I was -- when I looked at his income tax

3 1 return, with one of the things that struck me was that he
2 had claimed on the alimony and on his, which is a
3 different spreadsheet of what went into the amount of
4 alimony, was one hundred percent of her expenses for the
5 Bridle Path house and 50 percent of expenses for her
6 daughter's college expenses, I guess all of her college
7 expenses, and as part of my responsibility is in looking
8 at -- he claimed both of the children on his tax return,
9 but when I questioned Carol about it, she said that the
10 college age daughter lived at college. When she was home
11 she stayed with Carol.

12 So if she is staying in the Bridle Path property
13 and 100 percent of those expenses are included in the
14 alimony, and then half of her college expense were
15 included alimony, would indicate to me that maybe if Carol
16 did have to claim that as her alimony, that still more
17 than 50 percent that she supports the older daughter, and
18 that she should have been entitled to that expense. So
19 that kind of struck me, and we did discuss that very
20 briefly.

21 We discussed the -- where her younger daughter
22 resided, which was with her father, and I believe she said
23 she had lived with Carol -- Carol said she lived with her
24 part of the year, and then she moved in with her father
25 which Carol wasn't happy about that because he was out of

3 1 town a lot. She didn't feel like a 16 year old should be
2 left unsupervised for periods of time.

3 Q Okay. So you saw things in Mr. DeMocker's
4 income tax return that were raising red flags with you?

5 A Well, yeah, just in the way it was done.
6 Just in the way it was done, and the fact that when I --
7 when I looked at the list of the things that he had
8 included, and when I briefly read the temporary order, it
9 didn't look to me like she had to claim all of the alimony
10 that was on his income tax return.

11 Q In addition to the fraud that was
12 mentioned, did -- well, at the April meeting, did Ms.
13 Kennedy ever say what she was going to do about this
14 fraud?

15 A Well, she just mentioned that she was going
16 to call the IRS --

17 Q Okay.

18 A -- which I discouraged, if that's
19 appropriate.

20 Q Did she ever talk about taking him back to
21 court?

22 A No.

23 Q All right.

24 A Well, they hadn't been to their court
25 hearing yet. That was coming up. So she did not, no.

3

1 Q I'm talking about April at this point.

2 A Okay.

3 Q All right. Anything else that you
4 discussed on that -- at that particular meeting?

5 A Well, we just kind of went over her income
6 and what her expenses were because a part of her income
7 was on a 1099, and her purpose of being there was to file
8 an extension for 2007, and I had to determine whether or
9 not she had to send any money in with that extension.

10 Q All right. What was her demeanor when she
11 left that meeting?

12 A Still not happy. She -- I only -- yeah.
13 she still was upset of the potential she would have to pay
14 a lot in income taxes.

15 Q Right. When was the next time you had any
16 contact with Ms. Kennedy?

17 A Well, she called my office in -- I'm
18 guessing it was sometime in late May. I left for vacation
19 at the end of May, I think on the 27th of May, was gone
20 for three weeks, and she called before I left. So it was
21 sometime toward late May that she had called and wanted me
22 to calculate for her what the tax implications would be on
23 a QDRO that she was expecting that the court was going to
24 give her, you know, at the divorce hearing, was giving her
25 a QDRO, which is a Qualified Domestic Relation Order.

3 1 It's a method for people to get money out after tax, out
2 of a pension plan, and if it's a QDRO, it saves that ten
3 percent penalty for early withdrawal. So that -- she had
4 wanted to know how much tax she was going to owe on that,
5 and that was the purpose of that phone call. That was as
6 I recall about the only thing that was discussed in that
7 phone call.

8 Q Okay. Based on that phone call, what did
9 you do?

10 A Well, I just put the projection in the tax
11 program, and I -- and I do not recall because I changed it
4 12 later when I came back, true figure. I do not recall what
13 I gave her as income taxes. I know it ended up it was
14 over -- I believe it was over \$60,000 out of the QDRO
15 would be for taxes just for 2008.

16 Q \$60,000 of tax liability?

17 A Tax liability for federal and state.

18 Q Okay. And that was out of a QDRO
19 distribution that would be \$1,098?

20 A \$187,000 --

21 Q Right.

22 A -- was I believe the amount that she got.

23 Q Okay.

24 A She did express to me when she got it, just
25 very briefly. We did not go into any conversation about

4 1 it, but that in addition to her getting that and the
2 taxes, that she -- the court would be ordering her to pay
3 certain community debts and other stuff, but that was the
4 extent. It was a fairly short conversation.

5 Q This projection that you gave to her, the
6 60,000 in tax liability, something you did for her while
7 still on the phone?

8 A That's correct. That was just verbal,
9 uh-hum.

10 Q What was the next contact you had with Ms.
11 Kennedy?

12 A She had called the Office two different
13 times. As I say, I was out of town, but my next
14 appointment with her was on June the 25th of 2008.

15 Q Describe Ms. Kennedy when she arrived at
16 your office?

17 A When she arrived at my office, I didn't
18 know where she was coming from because she was upset when
19 she got there. She had a 4:30 appointment, and she
20 arrived early, and since my prior client had left, I went
21 ahead and took her in there because I could tell she was
22 upset.

23 Q How could you tell she was upset?

24 A By looking at her and just by, you know,
25 just briefly talking with her when I went to get her and

4 1 the way she was walking and everything.

2 Q Tell us what it was that you saw.

3 A She was just visibly upset. I don't want
4 to say disheveled, but she was visibly upset, and I got
5 the impression she came from somewhere. She did not say
6 where, and I don't know why she got there early other than
7 wherever she had been, I believe that she had indicated to
8 me that had gotten over early, and so she came into my
9 office just in the chance she would see me, but when I
10 brought her into my office, of course, then she expressed
11 different types of anger and frustration and --

12 Q Tell us what --

13 A -- just in general upset.

14 Well, she had the -- she brought in the other
15 information, and we were still talking about her 2007
16 income tax return.

17 Q You said the other information.

18 A Well, she brought in the court order for
19 the divorce, and she asked me if I wanted to see it, and I
20 said no because we're doing your 2007 tax returns. So
21 just bring it back when you come back to your next
22 appointment because I -- you know, she would either have
23 to get the tax return or something.

24 So turning the conversation with her, and it was
25 all about, you know, how much taxes she might have to owe,

4 1 it was almost all about taxes, but she had me again look
2 up with -- make the projections on the QDRO, and this time
3 it included what her alimony -- the rest of the alimony
4 would be for the rest of 2008, plus the QDRO, plus her
5 other earnings, and then I came up with -- it was in
6 excess -- it was in excess of -- hold on. I think I put
7 it on here. I think it was 54,000 to the IRS, and then an
8 additional amount to the state.

9 Yeah, and \$7,775 to Arizona, and that again was
10 a projection because we didn't have all the figures in.

11 Q How did -- how did Ms. Kennedy take that
12 news?

13 A Well, she -- she was sitting -- she had
14 either a piece of paper, on the back of an envelope or
15 something, and she was making notes and going over with me
16 what all the court had ordered her to pay out of that, and
17 the ones that she -- she was writing on it, but the one
18 she verbalized, she, in addition to her taxes for, you
19 know, the ones that were due, and then on the QDRO and
20 everything, her attorney had not been paid yet. She owed
21 him a sum of money. She still owed some money to the
22 forensic accountant that had been hired by her attorney,
23 and she made the remark that she was upset at her attorney
24 because she did not feel like he earned the fee. That she
25 did not feel that he represented her well. That she had

5 1 had to do all the work herself and that he didn't do
2 anything. Part of that was brought on because one of the
3 things that I had asked her at the April 10th meeting was
4 to get the court to clarify, if they would, how much of
5 that temporary order was suppose to be taxable to her. So
6 her attorney was suppose to do that.

7 So then when I inquired whether or not he did
8 that, she said no, he didn't do anything. I had to do
9 everything myself, and I didn't get it, and then in
10 mentioning the money, it showed him and the forensic
11 accountant so she still owed money to. That's the only
12 person who halfway did anything for me. Everybody else
13 let me down, and she was just very upset.

14 Q Was Mr. Fruge her attorney the only person
15 in specific that she was upset with?

16 A Well, she was upset. She had also asked me
17 to calculate what the income tax was going to be on her
18 alimony, which would have been, because the QDRO was in
19 '08, there was other income involved. That involved doing
20 a projection for 2009, and based on her, she wanted to
21 find out if she got a job making \$25,000 a year, and had
22 her alimony, she wanted to find out what her tax liability
23 would be in 2009 with the alimony and it ended up being a
24 lot.

25 Let me see. I think it was close to \$13,000,

5 1 and she was upset about that because she said I'm not
2 going to be able to keep my house. She said, I'm going to
3 lose my house, and she was very upset about that.

4 I think she was probably attached to it. She
5 didn't say. She was just upset about that. So she was
6 upset at the amount of alimony. She was upset that the
7 judge didn't give her more than what he gave her.

8 She was upset that out of the QDRO, she was
9 going to have to pay community bills. That she didn't
10 think some of them were hers, that she felt should have
11 been his personal responsibility, and just in general she
12 was just pretty upset.

13 Q Did she make any statements about Mr.
14 DeMocker?

15 A Well, again, she brought up the tax fraud
16 again, and she was going -- she said she was going to call
17 the IRS and report him for tax fraud, which I asked her
18 not to do.

19 She also in that conversation brought up the --
20 he had presented to court, for the temporary order, a
21 document showing that from January 1 through whenever that
22 period of time was, that his earnings were \$16,000.

23 Q That catch your interest?

24 A Well, it did because if she had to claim
25 any community income -- any community property income,

5 1 then that would be the amount she had to claim half of,
2 2 not half of his earnings. I did get a little excited
3 3 about that. That was the first good news I heard in a
4 4 while.

5 So I excused myself and went to the office next
6 6 door. There is a C.P.A. next door, Drury Sylvester. I
7 7 went and checked with Drury, and I wanted to make sure I
8 8 was exactly correct. That if she had to claim any
9 9 community property, it would be half of the 16,000, not
10 10 all his earnings, and whether or not the spousal support,
11 11 because the temporary order did not specify it was taxable
12 12 to her or even called the ordered payments spousal
13 13 support, whether or not she would have to pay income tax
14 14 on it. He indicated he thought not also.

15 So then I went back and told her, that I asked
16 16 Carol if she could get a copy of that document for me, and
17 17 I recommended that she -- she not get it from Steven?
18 18 That it would probably be better if we just got it from
19 19 her attorney or got it directly from the court, and that
20 20 after we got that information, that we really needed to
21 21 have a tax attorney come in and go over all the documents
22 22 and go over all the different tax laws so that we could
23 23 prepare her 2007 tax return with proper disclosures to the
24 24 IRS and how we came up with those figures and why they
25 25 were what they were, and then we would send her a tax

5 1 return in, and again, she is upset and talking fraud and
2 2 talking calling IRS, and I told her there was no need for
3 3 her to do that. That she just needed to put that out of
4 4 her mind. She needed to stop upsetting herself over some
5 5 of those things because when she filed her tax return, the
6 6 IRS would automatically cross-reference it with his. They
7 7 would look at the disclosure. They would be in contact
8 8 with one or both of them, and she would not need to do
9 9 anything. That if in fact there was anything for the IRS
10 10 to look at, that they would take care of it themselves.
11 11 That she did not need to get involved in that.

12 Q Did she also mention taking Mr. DeMocker
13 back to court?

14 A No, she didn't.

15 Q Okay. Did she mention Mr. DeMocker having
16 spoken to her at her settlement or after her settlement
17 hearing?

18 A She did. It was one of those things, I
19 tried to limit my client's conversations to our tax issue,
20 which is not always easy to do because people do tend to
21 get off to other things, but one time I saw her come close
22 to laughing or smiling, it might have been like one of
23 those la-la-la kind of things, she said you're not going
24 to believe or can you believe this, when we left the
25 courthouse, he asked me out as if he thinks we could still

6 1 be friends after all this?

2 Q Who was she referring to?

3 A She was referring to Steve as they were
4 leaving -- my impression, Steve, as they were leaving the
5 courthouse following the actual divorce hearing.

6 Q During this time that she was talking to
7 you and giving you this information, did she ever calm
8 down?

9 A No, and I -- you know, I said the right
10 thing. I often have clients come in that are upset
11 because nothing upsets people more than income taxes, and
12 if they think they're going -- or they think IRS will be
13 after.

14 Sometimes I have clients who haven't filed or
15 need to file and whatever, and they come in and they are
16 very upset, and normally, after you spend some time with
17 the person, they actually do calm down themselves, you
18 know, okay, and, you know, okay, trust you that you know
19 things are going to be all right, and that's actually one
20 of the things I'm really good at is getting clients to
21 calm down, and it was disturbing beyond words that not
22 only could I not calm her down when she left my office
23 that day, I was concerned enough about her, I walked her
24 down the hall still trying -- this was after 5:00 o'clock.
25 The building was just about closed. There wasn't anything

6 1 else in the building except in our office, but she was
2 still upset.

3 She was -- it's hard to explain how she was, but
4 when a person gets real stiff and their body is real stiff
5 like a board, that's the way she was, and that has haunted
6 me pretty bad, that that's the last time I saw her.

7 Q Okay. Let's go back to you telling her
8 about getting a tax attorney.

9 Did you -- did you tell her anything about
10 letting Mr. DeMocker know about her getting a tax attorney
11 to prepare her tax returns?

12 A No. I felt it was better, and I told her I
13 thought it was better she did not mention it to him.

14 Q Why?

15 A I -- I just -- I don't know. I just --
16 instinct maybe. I do not know. I just had a feeling that
17 it was not a good idea.

18 Q Do you know if she ever told Mr. DeMocker
19 that she was getting a tax attorney?

20 A I don't know. That was the last time I
21 ever saw, talked to her.

22 THE COURT: Can I ask both of you to wait until
23 the other is finished --

24 THE WITNESS: I'm --

25 THE COURT: -- before you answer? It helps my

6 1 court reporter.

2 MR. AINLEY: Just a second. I'll be right back
3 with you.

4 (Pause.)

5 Q BY MR. AINLEY: Do you remember anything
6 else that the two of you discussed at that last meeting?

7 A I don't think so.

8 Q Okay. Why are you crying?

9 A I can't get the picture out of my mind of
10 how upset she was when she left. I just -- I just can't
11 get the picture out of my mind.

12 I've never seen somebody so -- I don't know, you
13 know, stiff like that; almost inconsolable. I just don't
14 know. I just don't know, but that has haunted me. I just
15 can't get it out of my mind. It was just very upsetting
16 and disturbing to me, and when I read in the paper, you
17 know, in July --

18 MR. SEARS: Your Honor, I object. This is --

19 THE WITNESS: -- well, I just --

20 MR. SEARS: -- brings matters beyond the scope
21 of this hearing.

22 THE COURT: Yes. Whether the witness is upset
23 or not isn't relevant.

24 THE WITNESS: I'm sorry.

25 MR. AINLEY: Thank you, Ms. Wallace. I don't

6 1 have any other questions for you at this time.

2 THE COURT: Mr. Sears.

3
4 CROSS-EXAMINATION

5 BY MR. SEARS:

7 6 Q Ms. Wallace, my understanding is that Carol
7 brought you a number of documents when she came in to see
8 you on April 10th, the first time you ever met her; is
9 that right?

10 A Yes.

11 Q Now, among the documents apparently were a
12 pair of e-mails, one from her former husband Steven
13 DeMocker to her, and one from Doug Rader, their CPA, to
14 Steve and Carol.

15 Do you recall getting those?

16 A Yes, I do.

17 Q Let me show you, these are Exhibits 79 and
18 80.

19 Are these copies from your files, those two
20 e-mails?

21 A Yes, they are.

22 MR. SEARS: Okay. I would move 79 and 80 --

23 THE COURT: Can you differentiate which one?
24 Can you give which one 79 is and 80?

25 MR. SEARS: 79 is the e-mails from Carol Kennedy

7 1 to Steve DeMocker, December 29th, 2008, and Exhibit 80 is
2 an e-mail from Doug Rader to Steven and Carol Kennedy also
3 December 29th, 2008.

4 THE COURT: Any objection to 79 and 80?

5 MR. AINLEY: No objection.

6 THE COURT: 79 and 80 are admitted.

7 Q BY MR. SEARS: So I understand, Carol
8 brought you, among the other documents she wanted you to
9 look at, these two e-mails, one from Steve to her, and one
10 the same day from Doug Rader to the two of them, both
11 addressing the question of how much alimony Steven could
12 claim a deduction for that would be correspondingly taxed
13 to Carol; is that right?

14 A That's correct.

15 Q You reviewed those e-mails, I assume, and
16 since then on more than one occasion; is that right?

17 A No. Just the first time, just the first
18 time when she brought them in I made a copy of them and
19 put them in my file.

20 Q Did you read them?

21 A I did at that time.

22 Q Okay. Now, the e-mail from Steve to Carol
23 is a pretty detailed explantion of what he was proposing
24 to do if he had talked to his accountant, Doug Rader, who
25 had been their accountant apparently?

7 1 A That was my understanding.

2 Q And that he had talked about whether he
3 could and should claim any of the money he was paying to
4 her under the court order as alimony, and Doug had given
5 him advice about whether he could do that, correct?

6 A That is correct.

7 Q And this e-mail appears to be Steve telling
8 Carol that and telling her what he was planning to do,
9 correct?

10 A That is correct.

11 Q And there is some indication in both of
12 those e-mails, that particularly the one from Doug Rader
13 to the two of them, that Doug Rader had run some
14 comparative calculation on the consequence if they file
15 jointly and file separately for tax year 2007; is that
16 correct?

17 A That is correct.

18 Q And the one particular -- the one there
19 from Steve DeMocker makes some specific suggestion at the
20 end saying that if you have concerns and wanted to do
21 something else, let me know, words to that affect,
22 correct?

23 A That is correct.

24 Q Was it your understanding, both from
25 looking at those e-mails and from your conversations with

7 1 Carol, that she certainly knew in advance of Steve filing
2 his 2007 tax return that he intended, unless some other
3 agreement was reached, to claim a portion of the money he
4 was paying her as alimony on his own tax return; is that
5 correct?

6 A That is correct, and she also brought
7 another document with other calculations on it. So, yes,
8 she had brought this and she brought the other information
9 from her records from Doug.

10 Q Let me show you what's been marked for
11 identification as Exhibit 78, and is Exhibit 78 one of the
12 other documents you're talking about that has calculations
13 and some notes?

14 I think that -- is that in evidence?

15 MR. AINLEY: Yes.

16 Q BY MR. SEARS: There is another one that
17 actually outlined the 98,000. This was an earlier one,
18 and she -- this one she did dispute, and then he changed
19 it, but he actually came up with more on the second go
20 round.

21 It was your impression that whatever it was that
22 Steven's accountant was proposing to do would have come as
23 no surprise to Carol. She simply didn't agree with it?

24 A Correct.

25 Q And when she came to see you, was it your

7 1 understanding that in addition to extending the return,
2 2 because it was almost the deadline when she came in to see
8 3 you, that she wanted your opinion about whether she could
4 4 file a separate return with different numbers on it to
5 5 demonstrate what she thought the appropriate treatment
6 6 was?

7 A Well, I feel that she kind of already knew
8 8 that.

9 Q That she could do that?

10 A Yes.

11 Q All right.

12 A And --

13 Q Go ahead.

14 A I do not recall who referred her, but
15 15 evidently she had discussed the situation with other
16 16 people before coming in to see me, and perhaps somebody
17 17 else had told her that, because when she came in to see
18 18 me, as I recall, she already knew that.

19 Q So the discussion originally with her was
20 20 pretty focused?

21 A It was focused primarily on this alimony
22 22 issue and was what Steven was doing, with the help of his
23 23 certified public accountant, correct, or was there
24 24 anything she could do about it, right.

25 Q And this would have been to your

8 1 understanding before the divorce was finalized between the
2 two of them, correct?

3 A Correct.

4 Q And your suggestion at that time was let's
5 file the extension, get some additional information. We
6 will get together, and we'll do a return, and we'll see
7 what it turns out to be?

8 A That's correct.

9 Q Okay. And so you got the extension for
10 her, and then she got back to you after the divorce was
11 final in June to do just that, to see what would happen;
12 is that right?

13 A That is correct.

14 Q She was much angrier in June than she was
15 in April?

16 A That is correct.

17 Q Now, in terms of your understanding of
18 fraud, I assume you understand that there's, in the world
19 of taxes, there is criminal fraud and civil fraud that are
20 a possible consequence of some -- of taxpayer's conduct?

21 A That is correct.

22 Q There is nothing about this alimony
23 dispute, is there, that has anything to do whatsoever with
24 either civil or criminal fraud in your opinion, correct?

25 A Not -- not when it was based on the

8 1 information that they based it on.

2 Q It's a dispute between divorcing people.
3 That's not uncommon, correct?

4 A Right. That is correct, and sometimes just
5 a difference of opinion between preparers.

6 Q Steve has a certified public accountant
7 that is telling him you can do this.

8 You, as an enrolled agent, get a brief heads up
9 from a CPA down the hall that maybe that's not right?

10 A Well, if I may interject here, enrolled
11 agents are actually enrolled with the Internal Revenue
12 Service, and as part of that, I have 24 hours of advanced
13 tax law every year and other continuing education
14 requirements. I do know as much as a CPA. I just took it
15 to the CPA next door just to verify, that based on the
16 information that I had, that I discussed with him, that I
17 was correct. It wasn't to consult with him on what to do,
18 what not to do. It was, I'm correct in this, right? And
19 right.

20 Q I'm sorry if I gave you that impression. I
21 was just --

22 A Okay.

23 Q I was trying to get a sequence of events
24 here.

25 There are lots of people in this room know more

8

1 law than I'll ever learn.

2 Okay. Now, these agreements to disagree about
3 something specific like alimony deduction can often be
4 resolved administratively by simply filing a different tax
5 return which would cause IRS to take a step back and go,
6 huh, administratively determine who is right and who's
7 wrong and act accordingly.

8 A That is --

9 Q Either tell Carol she's out of luck, she is
10 going to pay the taxes, or tell Steve he is wrong, he has
11 to pay taxes, and maybe even penalties and interest.
12 That's the way it would be handled?

13 A That is correct.

14 Q You thought it was a better idea than
15 running off to complain to law enforcement about fraud --

16 A Well, yes. That's just something that
17 sometimes you just don't want to get involved in, and as I
18 said, IRS has there own procedures.

19 I had contemplated on her tax return because
20 Steve had not claimed the deduction on -- on his income
21 tax for the Bridle Path property, and in my one estimate
22 for her, the projected return for her, I had included that
23 portion of the spousal support even though may or may not
24 have had to, but I had included that, and then the
25 corresponding deduction against it, which had very little

1 affect on the taxes that she would owe.

2 So in fact, we weren't looking at a \$98,000
3 difference. So that was --

4 Q In fact those two e-mails you have right in
5 front there even talk about who should be able to claim
6 what portion of the mortgage interest deduction on Bridle
7 Path that was being discussed between Doug Rader and
8 Steven and Carol before you ever got involved?

9 A That is correct.

10 Q Okay. Now, you said that when you looked
11 at Steve's tax return, one of the things that caught your
12 eye was the fact that Steve had claimed a deduction for
13 college expenses and for support of Katherine her college
14 age daughter; is that right?

15 A It was included, a portion of her college
16 expense were included in the alimony. I don't know
17 whether or not he deducted any of them. I think the
18 income was too high to take any deduction on that personal
19 income tax. That was just included in -- my question was
20 why he claimed her as a dependent and then turned around
21 and included in alimony, in effect, most of the expenses
22 for her if she lived at home when she wasn't at college
23 and half of her college expenses.

24 Q What if there was a temporary court order
25 dated May 16th, 2007 in the divorce case which

9 1 specifically ordered Steve to pay all costs for Katherine
2 2 DeMocker's care, including food, housing, health care,
3 3 college expense, even clothing, car, et cetera, total
4 4 average of approximately \$3,839 per month? There is court
5 5 orders to pay some of the those sums?

6 A I knew that.

7 Q Okay.

8 A That has nothing to do whether or not he
9 9 charged half of that to Carol as alimony. He paid 100
10 10 percent. He says 50 percent of it is yours; 50 percent is
11 11 mine. That part's okay.

12 What I'm saying is, in the alimony was included
13 13 all Bridle -- 100 percent of Bridle Path which is where my
14 14 understanding was where she resided when she was not in
15 15 college, in fact had then lived with him, that made, you
16 16 know, that her primary residence. That he included 100
17 17 percent of those expenses for upkeep where she lived when
18 18 she wasn't in college, plus half of her college expenses
19 19 to Carol and in the amount of alimony, and turned around
20 20 and claimed her as a dependent. It wasn't whether or not
21 21 he did it or didn't do it. It was just -- struck me the
22 22 fact of my cake and eat it, too, you know.

23 Q And this tax return was prepared by a
24 24 certified public accountant?

25 A That is correct.

9

1 Q Okay. And you know, don't you, that where
2 a minor child or dependent child resides is only one part
3 of the circumstances that's considered in determining who
4 is entitled to take a dependent?

5 A That's correct, and supports one of the
6 other parts.

7 Q True. Who provides more support than the
8 other?

9 A That's true according to what I looked at.
10 Carol was providing more support of the older daughter.

11 Q Notwithstanding the fact I just read you
12 language from a court order, he says he has to pay a
13 hundred percent?

14 A He charged 50 taxable to her and deduction
15 on the alimony. So it doesn't matter what the court
16 ordered him to pay. It's what he put on his tax return as
17 alimony that she had to pay income tax on.

18 The fact that he paid it and then turned around,
19 got to deduct it from his income still meant that Carol is
20 the one that paid the income tax itself.

21 Q That's not fraud, is it?

22 A Not necessarily.

23 Q It's just an aggressive position on a tax
24 return by a certified public accountant, correct?

25 A Mostly.

9 1 Q You didn't see any reason to tell Carol to
2 2 run down to the attorney's office or Internal Revenue
3 3 Service and report either Steve or his accountant or both
4 4 of them committing civil or criminal tax fraud on that
5 5 point?

6 6 A Well, no, I did not. I never recommend
7 7 anyone contacting the IRS, report fraud on somebody else.
8 8 Normally IRS looks at the person first if they even pay
9 9 any attention to it. It's not just something you do.

10 10 Q Now, when Carol came back on June 25th, by
11 11 then she was divorced, wasn't she?

12 12 A That is correct.

13 13 Q Did she tell you that the way the divorce
14 14 was solved was through a settlement that actually took
15 15 place on the date of the trial in this very building just
16 16 one floor below here?

17 17 A I don't believe so.

18 18 Q Okay. Did she tell you -- I think you said
19 19 she brought the consent decree. You didn't want look at
20 20 it that particular time?

21 21 A That's correct.

22 22 Q Have you looked at the consent decree since
23 23 then?

24 24 A No, because she took it with her, and I
25 25 haven't had access to it.

10 1 Q Now, if I understand among the complaints
2 that Carol is making to you in this June 25th session, she
3 was complaining that she didn't think it was fair that she
4 should pay certain debts out of the net proceeds of this
5 QDRO because among other things, she didn't think they
6 were her debts to pay nor did she think it would leave her
7 enough money to get by on; is that correct?

8 A That's correct.

9 Q Now, if I told you that the divorce decree,
10 which is Exhibit 55 in evidence in this case, specifically
11 said that remaining balance of the 401K after payment of
12 credit card debts, which are broken out by account number,
13 shall be wife's to use for the full tax liability she
14 would incur due to distribution of her 401K and other
15 obligations, would that surprise you based upon what
16 Carol's complaining about. She has a written agreement
17 with her signature on it and the judge's signature saying
18 she could do that?

19 A No. Doesn't surprise me. She brought it
20 up, and she had a piece of paper of everybody to be paid.
21 Doesn't mean she wasn't upset there wasn't going to be
22 anything left over for her.

23 Q Help me out here, Ms. Wallace. You
24 understand Carol settled the divorce. There was a
25 settlement agreement, a consent degree, settlement

10 1 agreement that she signs while she was represented by a
2 lawyer in which she agrees to do specific things with this
3 QDRO money, but she is going to come to your office four
4 weeks later and start complain mightedly about the
5 unfairness of it all?

6 A People do that.

7 Q Sure.

8 She was going to complain not only was it unfair
9 that everybody let her down, her lawyer, the accountants,
10 the judge, everybody else, did that make you a little bit
11 nervous about you would be the next person she would blame
12 if it didn't go her way?

13 A No. I don't care. People blame me for a
14 lot of things. My obligation to a client and what the IRS
15 requires is that when I do a tax return for a client, that
16 that client pays the lowest legal tax bill that they are
17 required to pay by law.

18 Q Okay.

19 A And that's the only place I was coming
20 from.

21 Q This settlement in her divorce decree where
22 she agreed to do that doesn't seem like fraud on the part
23 of Steven DeMocker to you, does it?

24 A I wouldn't know. I haven't read the whole
25 thing, and her complaints about the fraud went all the way

10 1 back to prior to and at least by 4/10 because the note
2 that she had written was prior to coming in to see me. So
3 those -- those complaints or those accusations were going
4 back prior to April 10th. So whatever was causing those
5 had not changed.

6 Q Okay. Now, Carol comes in on June 25th and
7 only remaining time you see her, and she is still talking
8 about reporting Steve for fraud. She still on the idea
9 that Rader ought to be reported for something?

10 A She didn't mention Rader. Again just
11 Steve, she is focusing on Steve.

12 Q Once again, you try to talk her down from
13 that and say let's just file your tax return. Let IRS do
14 your work for you. It will get sorted out in the wash
15 either way or Steve will win on this point and that will
16 be the answer?

17 A That is correct.

18 Q And you told her that if she had concerns
19 about this income business which you said was good news
20 for her, that his income was only \$16,000 somehow for four
21 and a half months in 2007, that she really had concern,
22 she should go to her lawyer or to the court and get a copy
23 of whatever it was that Steve filed with the court to
24 support that figure, correct?

25 A Well, it wasn't that she had a concern or

10 1 anything. I specifically asked her to get that document
2 because once I had that document or a copy of that
3 document, then we could complete her 2007 return and not
4 before then. I just felt it was a critical piece of
5 missing information.

6 Q But at that point, you had no idea whether
7 that, whatever document it was, if there is such a
8 document, was fraudulent or not, did you?

11 9 A I absolutely have no idea whatsoever, and
10 the word fraudulent didn't come up except for her saying
11 that he presented it to the court in order to keep from
12 paying her, you know, the spousal maintenance. That had
13 nothing to do with IRS whatsoever, nothing to do with the
14 IRS.

15 Q So it's just something that she keeps
16 harping on. You really don't want to hear it?

17 A That is what she wouldn't let go. I'm
18 just --

19 Q Now, the document you have that has some
20 typewritten materials and her handwritten notes, some also
21 has some unknown writing at the bottom about appointment
22 and phone calls, can you look at them?

23 A I think you might have taken that back.

24 Q I mistakenly had an unadmitted copy. I
25 think that might be it sitting right there.

11

1 Q It could be.

2 There is -- this is the admitted copy of 78 in
3 evidence. My mistake.

4 A Okay.

5 Q Okay. There is some notes in the middle
6 towards the bottom there appear to be in Carol's
7 handwriting, correct?

8 A That is her handwriting.

9 Q Could you read those outloud for Judge
10 Lindberg, please.

11 A I'm reading everything she wrote.

12 "He can deduct one half of payments on B.P.
13 mortgage if entitled in both our names. Either gets 25K
14 deduction as spousal support. Steve defrauding federal
15 government and his preparer Doug has violated standards of
16 your profession and I'm reporting you to state licensor
17 board."

18 Q These are her notes which are consistent
19 with what she said she wanted to talk to you about --

20 A Correct.

21 Q -- when she came in, but you moved the
22 discussion away from that to let's just do one thing at a
23 time. Let's get the extension and see where we are?

24 A That's correct.

25 Q Okay. There is nothing in that document

11 1 that indicates that she has sent that document or any
2 other notification to Steve that she intends to report him
3 to anybody?

4 A I haven't seen anything.

5 Q Okay. And you never met Steve before?

6 A No, I have not.

7 Q This is Steve here.

8 Your impression, wasn't it, that all she was
9 talking about, because she was still talking about it, it
10 must have been something she hadn't done yet?

11 A That's correct.

12 Q And if she was listening to you, hopefully
13 she wouldn't do that?

14 A That's correct.

15 Q And so when she dies a week or so later,
16 you don't know whether she had ever reported Steve to
17 anybody about anything?

18 A I would have no way of knowing.

19 MR. SEARS: Okay. Thank you.

20 I have no other questions.

21 THE COURT: Redirect?

22
23 REDIRECT EXAMINATION

24 BY MR. AINLEY:

25 Q You also don't know if she ever told Mr.

1 DeMocker she intended to report him to the IRS for fraud,
2 do you?

3 A No, I do not know.

4 Q Okay. When somebody reports fraud to the
5 IRS, you said that they -- often they get looked at first,
6 right?

7 A If IRS does anything. People don't know
8 that.

9 Q Okay. Ms. Kennedy didn't have anything to
10 look at, did she?

11 A Well, the only thing she would have had is
12 if she -- with the IRS, it was just alimony money which
13 may or may not have been defrauding. Anything else would
14 have been -- had a personal effect on her, not Internal
15 Revenue or any other governing body.

16 Q But when the IRS sees this sort of thing in
17 one tax return, will they sometimes start looking at other
18 tax returns --

19 A Well --

20 Q -- in past years?

21 A Normally what happens, hers would not have
22 been an amended return, but in every -- every location
23 where an income tax return is filed, they have a resident
24 criminal investigation person, and when an income tax
25 return is filed that the IRS feels is enough questionable,

11 1 they would often have the criminal investigation person
2 look at it first. This is the case of most amended
3 returns, another fact people don't know.

4 There would have been possibly a criminal
5 investigation person at that location that would have
6 looked at that. Most people do not know this. It is not
7 common knowledge.

8 Q If they start seeing enough irregularities,
9 that can cause an audit?

10 A That can cause an audit, and if they did an
11 audit, they felt there was some kind of pattern or
12 anything, they would go back and check other income tax
13 returns.

14 Q How far back?

15 A If they feel like there is fraud involved,
16 they can go back to infinity except they only actually
17 keep the returns for seven years unless it's an ongoing
18 investigation.

19 Q Certainly cover your 2004?

20 A Oh, yeah. That would have covered several
21 years back.

22 Q Okay. And Ms. -- did Ms. Kennedy ever
23 mention when she was talking about the fraud, ever mention
24 hiding assets?

25 A No. She never gave me any basis for that.

12

1 Q Okay. But her contention about the fraud
2 was before April --

3 A That is correct.

4 Q -- not concerning the settlement --

5 A That is correct.

6 Q -- before April?

7 A That is correct. It was -- apparently that
8 was something ongoing or something.

9 Q Okay. And Mr. Sears asked you that it was
10 four weeks after the settlement that Ms. Kennedy came in
11 to see you and was upset about the result of the
12 settlement, correct?

13 A That is correct.

14 Q Isn't it true that she had called you twice
15 in the meantime?

16 A She had, and I was out of town, and I was
17 out of town the first time and second time when she called
18 to schedule, apparently it was on June the 10th, and I,
19 for whatever reason, didn't have time to see her until the
20 25th.

21 Q She was trying to see you much earlier?

22 A She was. As far as I know she was making
23 attempts to make an appointment, although no appointment
24 was set until the later call.

25 Q Did you speak to her or somebody else?

12

1 A No. My office, they actually took phone
2 messages.

3 Q Would whoever took messages pass on to you
4 whether the caller was upset?

5 A No.

6 Q Or not upset?

7 A Once in a while they will. Very rarely.
8 Very rarely.

9 Q Okay. So you really don't know what Ms.
10 Kennedy's frame of mind was again the time of the
11 settlement and the time she actually got in to see you?

12 A No, I don't.

13 Q Was Ms. Kennedy happy with the job that her
14 attorney Mr. Fruge had done for her?

15 A No.

16 Q Why not?

17 A She had made the remarks to me he didn't do
18 anything for her. She had to do it all herself.

19 Q Was it your impression from your meetings
20 with Ms. Kennedy that she wanted to, use the colloquial
21 term, wanted to throw Mr. DeMocker under the bus with IRS?

22 A Probably, yes. There was something going
23 on, and with all her emotion and everything, I don't know.
24 There was something.

25 Like I said, when I told her what we would do

12 1 about filing the returns, sending them to the IRS, let IRS
2 handle it, I just did not feel that was satisfactory
3 because she should have calmed down a little bit. She
4 should have said, oh, yeah, that's a good idea, you know,
5 whatever. Normally that's what people do. That was not
6 what I got. That was not what I got at all.

7 MR. AINLEY: Thank you, ma'am. I don't have any
8 other questions for you at this time.

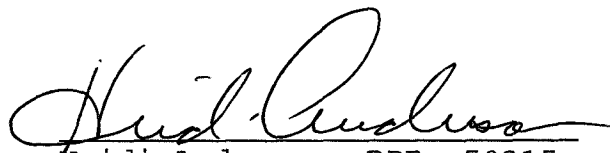
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10 (End requested partial transcript.)

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3 STATE OF ARIZONA)
4) ss.
5 COUNTY OF YAVAPAI)

6 I, Heidi Anderson, Court Reporter herein, hereby
7 certify that the proceedings had in the foregoing entitled
8 matter are contained fully and accurately in the shorthand
9 record made by me thereof, and that the foregoing pages
10 constitute a full, true and accurate transcript of said
11 shorthand record, all done to the best of my skill and
12 ability.

13 DATED this 16th day of June, 2009.

14 
15 Heidi Anderson, RPR, 50315
16 Certified Reporter
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